

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

In the matter of Oaston Road Cemetery

Petition to exhume the cremated remains
of Duncan Edward Jewkes

JUDGMENT

1. I am asked to make a decision on the petition of Debra Ann Farmer to permit the exhumation of the cremated remains of her Father, Duncan Edward Jewkes, so that the ashes may be scattered together with the cremated remains of Duncan Jewkes's relict, Nancy Winifred Jewkes. In the correspondence from Ms Farmer there appears to be consent for this matter to be determined on the basis of written representations.
2. The petition from Ms Farmer is dated 24th September 2020 and is accompanied by correspondence from Ms Farmer. Although there is the usual declaration that the relevant incumbent has given permission for the disinterment, that section of the form has not actually been signed. However, I have now seen correspondence from the relevant Incumbent, Revd Kelly Betteridge. I have

also been provided with correspondence from an officer of the Cemetery Office for Nuneaton and Bedworth Borough Council. I shall refer to the correspondence later.

Factual Background

3. For approximately 25 years Duncan and Nancy Jewkes operated as licensees of Public House premises in what I presume to be the Nuneaton area. However, Duncan died in or about early 1992 (the exact date has not been given). He was cremated and the ashes were interred in an earth grave in the consecrated area of Oaston Road Cemetery (plot N360) on 27th February 1992. Subsequently, I am now informed, Duncan Edward and Nancy Winifred's son, Duncan Robert Jewkes, also sadly died and his remains were also interred in the same earth grave (I am not informed whether his remains were cremated or not). Nancy Winifred then also died on 21st February 2020 and, it would appear, was also cremated but has not been interred in the grave with her Husband and Son. I am also informed that when Ms Farmer made her application the grave still vested in the estate of Nancy Winifred Jewkes, but arrangements have been made for the transfer of the exclusive right of burial to Ms Farmer.

4. Ms Farmer has explained that every year the family would holiday in Majorca and subsequently her parents took short breaks there each year. The island became a special place for the family and especially for the parents. Notwithstanding that the cremated remains of her Husband and her Son were both interred in the same earth grave it is reported that, on several occasions, Nancy Winifred stated that '*her dearest wish*' was that she and her husband '*be together in the afterlife in the place that meant so much to them both*'. Arising from that Ms Farmer now applies for the disinterment of her Father's ashes so that they, and the ashes of her Mother, can be spread together in Majorca. Ms Farmer has stated "*It is my duty to ask permission for such a request, I know*

my Mother wanted them reunited in this way. It would mean a great deal to me to know that they will spend their eternity together in this way, in the way my Mother expressed”.

I am not informed that Nancy Jewkes last will and testament contained any specific request relating to her mortal remains and those of her deceased husband.

Arrangements for exhumation and subsequent handling of ashes

5. Although Ms Farmer had not obtained written support from the relevant Incumbent for the disinterment, an officer of Nuneaton and Bedworth Borough Council, Lesley Rowland-Jones, has subsequently stated that the Borough Council does provide such consent. However, the relevant Incumbent has been contacted by the Diocesan Registry. In a letter dated 26th January 2021 Revd Kelly Betteridge stated *“After careful consideration, and for several reasons, I do not feel able to give my consent to the exhumation taking place.*

Whilst I [am] conscious of the wishes of, and reasons given by, the petitioner I feel it is right we should treat the mortal remains of Mr Jewkes with dignity and respect, and not cause them to be disturbed, particularly as nearly 29 years have elapsed since the interment”.

6. It is ordinarily expected that the petition should be accompanied by a report from the funeral director, who will be engaged to oversee any permitted disinterment, setting out how the exhumation would be accomplished so as to preserve the dignity of the remains of Duncan Edward Jewkes, especially as the original casket is likely to have become brittle or worse after being buried for nearly three decades. It would also be necessary here to ensure the mortal remains of Duncan Robert Jewkes were not disturbed. No such report has been provided, nor has any information been supplied concerning whether the authorities in Majorca would consent to the proposed disposal of the ashes, nor

whether the scattering of the ashes would be incorporated within a religious service, nor even what permissions would be obtained for the ashes to be transported abroad. However, given the matters that I shall express below, I have not sought to require that information.

Applicable principles in law

7. I have in particular had regard to guidance given by the Court of Arches in the leading judgment on exhumation, *In re Blagdon Cemetery* [2002] Fam 299. From the correspondence I have seen from Ms Farmer it would seem she does understand the principles that have to be applied in the Consistory Court.

8. Interment in consecrated ground is generally regarded as a permanent laying to rest of the deceased, especially as funerals and interment of ashes following cremation are given outward sanctity by the accompanying service led by a Priest, Deacon or Reader of the Church. The Right Reverend Christopher Hill (then Bishop of Stafford) in *The Theology of Christian Burial* explained this permanency :

‘The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks for [his/her] life; to commend [him/her] to God the merciful redeemer and judge; to commit [his/her] body to burial/cremation and finally to comfort one another.’

He went on to explain more generally that :

‘The permanent burial of the physical body/the burial of cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their “journey”), entrusting them in peace for their ultimate destination, with us, the heavenly Jerusalem. This commending, entrusting, resting in peace does not sit easily with “portable remains”, which suggests the opposite:

reclaiming, possession, and restlessness; a holding on to the 'symbol' of a human life rather than a giving back to God'.

9. In *Blagdon* the Court of Arches explained the legal view of permanency thus :
“*The general concept of permanence is reflected in the fact that it is a criminal offence to disturb a dead body without lawful permission. Moreover, the fact that there is no ownership of a dead body according to English law, and the absence of any legal right in English law or under the European Convention of Human Rights to exhume a body or cremated remains, reflects a culture in which the norm is that the remains of a dead person should not be disturbed once they have undergone the initial act of interment.*”

10. The above comments do not mean that exhumation cannot occur, but in *Blagdon* the Court expressed that there has to be some **exceptional** circumstance before the norm of permanent burial is set aside. The Court gave some guidance as to what could constitute exceptional circumstances. Most importantly for the present application “*a change of mind as to the place of burial on the part of relatives or others responsible in the first place for the interment should not be treated as an acceptable ground for authorising exhumation*”. The judgment of the Court does not qualify that guidance, but there was reference to an earlier judgment, *In re Christ Church, Alsager [1999] Fam 142*. In *Alsager* the Chancery Court of York said “*... it will not normally be sufficient to show a change of mind on the part of relatives of the deceased ... Some other circumstance must usually be shown*”. It is therefore very difficult for relatives to justify a request for translocation of buried remains when the principal reason is that the family now wishes the remains to be scattered (whether within a ceremony presided over by a Priest or not).

11. As I explained above, an officer of the Borough Council responsible for the cemetery has expressed support for the exhumation. However, I remind myself that in *Blagdon* it was also said :

“We do not regard it as persuasive that there is particular support for an unopposed petition any more than support for a contested petition of this nature would affect the decision on the merits of the petition. It is the duty of the Consistory Court to determine whether the evidence reveals special circumstances which justify the making of an exception from the norm of the finality of Christian burial, as we have already said earlier in this judgment. The amount of local support, whether clerical or lay, should not operate as a determining factor in this exercise and will normally be irrelevant.”

12. One of the issues that has not been addressed is why, apart from comments reported to have been made by Nancy Winifred, Ms Farmer feels that it would be preferable for her Parents’ ashes to be scattered, rather than her Mother’s remains be interred in what has now become a Family Grave, where her ashes would join the remains of both her husband and her Son (the Petitioner’s Brother). A Family Grave was one issue discussed in *Blagdon*. In particular it was said :

*“The concept of a family grave is, of course, of long standing. In a less mobile society in the past, when generations of a family continued to live in the same community, it was accepted practice for several members of a family to be buried in one grave. Headstones give a vivid picture of family relationships and there are frequent examples of one or more children predeceasing their parents due to childhood illnesses, which were incurable. Burials in double or treble depth graves continue to take place at the present time. **They are to be encouraged. They express family unity and they are environmentally friendly in demonstrating an economical use of land for burials.**”*

Conclusion

13. There was no mistake or misunderstanding in 1992 that Duncan Edward Jewkes' remains were being interred in consecrated ground. A deliberate decision was made almost twenty-nine years ago to bury his remains in the cemetery at Oaston Road. In fact, in her letter, Ms Farmer reported '*when my Mother buried my Father, she felt the sense of duty to bury in the traditional manner*'. Now, however, Ms Farmer feels she should seek to abide by comments made by her Mother concerning scattering of ashes in place of the Christian burial that initially took place. It is, to all intents, a matter where there has been a subsequent change of mind as expressed in the *Alsager* judgment. I have sympathy for Debra Farmer, who have acted with the best of intentions, but unfortunately the reasons given do not amount to the exceptional circumstances that would be required to justify exhumation. For that reason the petition must be refused.

Glyn Samuel
Acting Chancellor
29th January 2021.